

BOARD OF PERSONNEL APPEALS

MINUTES – MARCH 26, 2009 MEETING

PRESENT:

Leroy Schramm, Alternate Presiding Officer
Jack Holstrom, Presiding Officer (by telephone)
Steve Johnson
Jay Reardon
Pat Dudley
Quinton Nyman

STAFF ATTENDING:

Vivian Hammill, Board Attorney
Tonya McCormack
John Andrew
Joe Maronick
Paul Melvin
Ron Stormer

BOARD BUSINESS

APPROVAL OF MINUTES:

Moved approval of minutes from January 8, 2009 to next meeting.

NEXT MEETING DATE:

The next meeting is set for April 16th pending an appeal, in the second floor west conference room B of the Employment Relations Building, 1805 Prospect Avenue, Helena, Montana.

Tonya McCormack spoke to Board members in regards to changing the meeting date to the 3rd Thursday of every month instead of the 4th Thursday. The newest Board Member, Karla Stanton is unable to make the 4th Thursday due to being on a different Board that meets at the same time. Board Members Reardon, Nyman, Johnson and Presiding Officer Holstrom had no preference. Alternate Board Member Dudley had no preference either. Board Member Johnson moved to change the meeting date to the 3rd Thursday of the month and Board Member Reardon seconded the motion. Motion passed 5-0.

ATTORNEY COMMENTS:

The Board addressed the Legal Update regarding the Supreme Courts' proposed rule regarding lay representation received from Michael Dahlem. Board Attorney Vivian Hammill stated that the Administration will be submitting a letter in regards to the Supreme Court proposing new rules in regards to lay representation. Since it is not specifically mentioned on the Board Agenda it is not appropriate for the Board to take any action. Betsy Brandborg from the State Bar who has worked with Vivian on this issue, there was some issues with rural districts that some of the prosecutors were having unlicensed people representing. It was not meant to undo the judiciary or work comp letter from the Commission of Unauthorized Practice. She is recommending to not adopt but to clarify State government's stance on the lay representation. Vivian will copy Board Members with the letter as well.

Presiding Officer Holstrom stated that MACO attorneys plan on writing a letter to the Supreme Court as well. Member Reardon and Member Nyman stated their unions are submitting letters as well. Member Johnson stated his employer sent a letter out today.

In regards to the lay representation, Member Reardon is stressing the importance of protection. We may need to come back and modify our rules. Board Attorney Hammill stated that we can make our policy more restrictive as they are looking at it as an employee and not a contract. So those that use contract workers would need to submit to the Supreme Court on their own behalf. Board Member Nyman stated we should still look at the any and all approach and that we may need to come back and visit the issue. Presiding Officer Holstrom wants to look at what the Supreme Court is doing and we may have to come back and revisit the issue. Since the topic is not on the agenda we will need to schedule it for another meeting.

Board Member Nyman likes the any and all approach, may need to revisit. Board Member Johnson stated again that we should not have any restrictions in regards to contracted employees as well. Board Attorney Hammill stated that we should just go status quo and keep going with the policy as it is.

Board Attorney Hammill stated that it is also beyond the statutory requirements of the Board. Member Johnson asked if we needed to express an opinion in regards to the topic. Presiding Officer Holstrom stated that since we are such an autonomous Board we need to make sure we are in sync with the Governor's Office and Department of Administration.

Board Member Johnson, Reardon, Nyman and Presiding Officer Holstrom will look at the matter if it comes up again and have it duly noted correctly on the agenda.

MISCELLANEOUS:

Tonya McCormack introduced Ron Stormer as the Department's newest mediator.

HB136 is headed to the Governor to sign. The Governor has to approve alternate BOPA members.

The Arbitration Conference dates are set for September 23rd-25th in Butte.

ORAL ARGUMENT – UNFAIR LABOR PRACTICE 4-2009

SUSAN MONTGOMERY v. HELENA EDUCATION ASSOCIATION v. HELENA PUBLIC SCHOOLS

The above matter came before the Board. Leroy Schramm was the Presiding Officer in this matter. Board Member Nyman recused himself.

Oral argument was presented. Rick Larson appeared before the Board to represent the Helena Education Association; Jeff Hindien appeared before the Board to represent the Helena School District. Sue Montgomery participated by telephone.

The matter before the Board was to determine if there was any merit to the Board Agent's Investigative Report and Dismissal. The ULP was dismissed with no merit. Board Member

Reardon moved to adopt the Board Agent's decision and Member Johnson seconded the motion. Motion passed 4-0.

When a case comes in to the Board, it is assigned to an investigator to review to see if there is merit. The investigator will then look at the facts given by both parties before issuing his report. If merit is found it will then go to a hearing, if no merit is found and it is appealed it will then go before the Board to review the findings.

Upon discussion of the Board, the report has to have some allegation of deficiency in the report. This has not been met in this case.